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**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON**

**HOGBACK BASIN PRESERVATION
ASSOCIATION, and SIERRA CLUB,**

Plaintiffs,
vs.

**UNITED STATES FOREST SERVICE, and
WHITE PASS COMPANY,**

Defendants.

Case No. CV-07-_____

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

///

I. INTRODUCTION

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2 **1.** This is an action for declaratory and injunctive relief challenging the Record of Decision
3 (“ROD”) and the Final Environmental Impact Statement (“FEIS”) issued by the United States Forest
4 Service for the White Pass Ski Area expansion. Plaintiffs, the Hogback Basin Preservation Association,
5 and Sierra Club, challenge the decision by the U.S. Forest Service denying their administrative appeal
6 and approving the ROD and FEIS for the proposed White Pass Ski Area expansion.
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10 **2.** This action arises under, and alleges violation of, the National Environmental Policy Act
11 (“NEPA”), 42 U.S.C. § 4321, *et seq.*; the National Forest Management Act (“NFMA”), 16 U.S.C. §
12 1600, *et seq.*; the implementing regulations of these laws; the Administrative Procedures Act (“APA”), 5
13 U.S.C. § 501, *et seq.*; and various laws and policies protecting the rights and interests of the plaintiffs in
14 this matter.
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18 **3.** This complaint challenges specifically the following actions: (1) defendant’s decision, by
19 and through the Gifford Pinchot National Forest Supervisor and the Okanogan and Wenatchee National
20 Forests Supervisor approving the expansion of the White Pass Ski Area as permitted by the ROD dated
21 June 14, 2007; (2) the decision by the Gifford Pinchot National Forest Supervisor and Okanogan and
22 Wenatchee National Forests Supervisor approving Amendment No. 19 to the Gifford Pinchot National
23 Forest Plan as contained in the Record of Decision dated June 14, 2007; and, (3) the FEIS for the pro-
24 posed expansion of the White Pass Ski Area dated June, 2007. Plaintiffs seek an order directing the U.S.
25 Forest Service to withdraw its ROD and FEIS.
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30 **4.** Until the defendant United States Forest Service complies with the requirements of
31 NEPA, NFMA, the APA, and the rules and regulations implementing these laws, plaintiffs will seek
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1 temporary, preliminary, or permanent injunctions against any federally approved activities that in any
2 way relate to the proposed ski area expansion, and any other such relief as plaintiffs deem appropriate.
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5 5. This relief is necessary to preserve the status quo, to prevent illegal agency action, and to
6 forestall irreparable injury to the environment and to plaintiffs' interests.
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8 9 II. JURISDICTION AND VENUE

10 6. Jurisdiction over this action is conferred by 28 U.S.C. § 1331 (federal question), § 2201
11 (declaratory relief), and § 2202 (injunctive relief).
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14 7. The actions at issue, the approval of a Record of Decision and Final Environmental Im-
15 pact Statement were issued for the expansion of the White Pass Ski Area. The area slated for expansion
16 of the ski area is located entirely in the Gifford Pinchot National Forest which is located in this district.
17 Further, the majority of plaintiffs reside in this district. Venue is properly before the District Court for
18 the Western District of Washington pursuant to 28 U.S.C. § 1391(e) or § 1392.
19
20

21 22 III. PARTIES

23
24 8. Plaintiff Hogback Basin Preservation Association ("HBPA") is a non-profit organization
25 organized under the laws of the State of Washington. HBPA is a membership organization of individuals
26 who have lived, used, enjoyed, and valued the area of the proposed ski area expansion for many years.
27 Members of appellant HBPA regularly use the Gifford Pinchot National Forest and Okanogan and We-
28 natchee National Forests for hiking, camping, backpacking, bird watching, cross-country skiing, down-
29 hill skiing, and biological study. In particular, members of appellant HBPA extensively use the Hogback
30 Basin, the White Pass Ski Area, and the Goat Rocks Wilderness Area for recreation and other purposes.
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2 **9.** Plaintiff Sierra Club is a national conservation organization with 580,000 members in-
3
4 cluding 25,000 in Washington State. Its principal place of business in Washington is the Cascade Chap-
5 ter Office at 180 Nickerson Street, Suite 202, Seattle, WA 98109. Its national headquarters is at 85 Sec-
6 ond Street, San Francisco, CA 94105. Sierra Club members use the Gifford Pinchot National Forest and
7
8 the Okanogan and Wenatchee National Forests for many purposes including hiking, camping, cross-
9 country skiing, downhill skiing, backpacking, fishing, bird watching, nature photography, horseback rid-
10 ing, and biological study. In particular, members of the Sierra Club use the Hogback Basin Area and
11
12 Goats Rock Wilderness Area for recreational and other purposes. Sierra Club and its members have been
13 actively involved in the planning process for the Hogback Basin Area and the proposed expansion of
14
15 White Pass Ski Area. Sierra Club members will be materially and adversely affected by the proposed
16
17 expansion of the White Pass Ski Area and activities and impacts inherent in this development.

18 **10.** The Record of Decision allowing expansion of the White Pass Ski Area approves the cut-
19
20 ting of trees in an inventoried roadless area, the construction of a parking lot in another inventoried
21
22 roadless area and other development activities that will significantly degrade the roadless and wilderness
23
24 values currently enjoyed by plaintiffs and their members.

25 **11.** The decision approving the White Pass Ski Area expansion creates an actual and immi-
26
27 nent invasion of plaintiffs' interests.

28
29 **12.** The decision approving expansion of the White Pass Ski Area, and its imminent harm to
30
31 plaintiffs, is traceable directly to the actions of the federal defendant that approved the action.
32

1 **13.** Because defendant's actions approving the expansion violate several procedural and sub-
2 stantive laws, a favorable decision by this Court reversing the Record of Decision and rescinding the
3 Final Environmental Impact Statement will redress the actual and imminent injury to the plaintiffs by
4 eliminating the legal basis for the ski area expansion.
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8 **14.** Plaintiff organizations and their members submitted timely and substantive comments to
9 the Forest Service during the NEPA process.
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12 **15.** Plaintiffs Hogback Basin Preservation Association and Sierra Club filed a timely admin-
13 istrative appeal with the Regional Forester as allowed by Forest Service regulations. This administrative
14 appeal was denied. Plaintiffs have exhausted their administrative remedies and have no further adequate
15 remedy at law.
16

17
18 **16.** Defendant, United States Forest Service ("USFS"), is an agency of the United States De-
19 partment of Agriculture. The USFS is responsible for the administration and management of the Gifford
20 Pinchot National Forest and the Okanogan and Wenatchee National Forests, including implementation
21 of NEPA, NFMA, the APA and the various laws and policies protecting the rights and interests of the
22 plaintiffs in this matter.
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26 **17.** Defendant, White Pass Company ("Company"), is the concessionaire and operator of the
27 White Pass Ski Area that is the subject of the ROD and FEIS at issue in this matter. Defendant USFS
28 has authorized the Company to commence timber cutting and other ground-disturbing activity based on
29 the ROD. As such, the Company has an interest relating to the subject of this litigation and is situated
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1 such that the disposition of this matter may impair or impede the Company's ability to protect its inter-
2 ests in same.
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5 **IV. OPERATIVE FACTS**

6 **18.** The White Pass Company operates the White Pass Ski Area at White Pass, Washington,
7 under a special use permit with the U. S. Forest Service. The White Pass area is located in the northeast
8 portion of the Gifford Pinchot National Forest and in the southwest portion of the Okanogan and We-
9 natchee National Forests. The ski area is located approximately 50 miles west of Yakima, Washington,
10 20 and 35 miles east of Packwood and Randall on U.S. Highway 12. The ski area is located both in
11 Yakima and Lewis counties.
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15 **19.** With the exception of U.S. Highway 12 and the existing transportation support system
16 for White Pass Village and Ski Area, the area remains roadless. The White Pass area is adjacent to the
17 Goat Rocks Wilderness on the southern boundary and the William O. Douglas Wilderness on the north-
18 ern boundary. The present boundaries of the White Pass Inventoried Roadless Area are entirely within
19 the area analyzed by the Forest Service's NEPA review.
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23 **20.** Hogback Basin is one of the headwaters of the Clear Fork of the Cowlitz River. The
24 Clear Fork of the Cowlitz River was designated a Tier 2 Key Watershed by the 1994 Northwest Forest
25 Plan for the purpose of protecting high quality aquatic habitat and high quality water.
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29 **21.** In 1985, the White Pass Company began exploring the area surrounding its current opera-
30 tions for expansion. The company explored expanding into the 800-acre Hogback Basin. This area is
31 currently designated as an Inventoried Roadless Area. These early explorations led to the preparation of
32

1 a Final Environmental Impact Statement and Record of Decision in July, 1990. That Record of Decision
2 was subsequently withdrawn consequent to litigation based on concerns over threatened and endangered
3 species, old growth habitat, air quality, historic, and American Indian religious values. In 1992, the
4 White Pass Company withdrew their expansion permit application.
5

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8 **22.** From 1992 to 1998, the Forest Service and the White Pass Company continued to review
9 the area around the existing ski area for expansion. In 1998, the White Pass Company again requested
10 permission to expand its permitted operations into the 300 acre Hogback Basin area -- part of the larger
11 Hogback Basin. The proposal before the Forest Service was to allow an expansion of ski runs, the con-
12 struction of an additional chair lift, the construction of a mid-mountain day lodge, and construction of a
13 road into an Inventoried Roadless Area. Again, the plan was challenged and this court found it to be
14 unlawful.
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17
18 **23.** Since 2001, the Forest Service and the White Pass Company continued to review the area
19 around the existing ski area for expansion. The White Pass Company has again requested permission to
20 expand its operations into the Hogback Basin. The proposal before the Forest Service is to allow a 767-
21 acre expansion adding 90 acres of ski-terrain on 18 new trails, the construction of two additional chair
22 lifts, the construction of a mid-mountain day lodge in the Hogback Basin, as well as the cutting of 22
23 acres of trees and construction of a seven-acre parking lot road in Inventoried Roadless Areas.
24
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28 **24.** In December, 2004, the U.S. Forest Service issued a Draft Environmental Impact State-
29 ment and accepted public comments on the proposal.
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1 **25.** In June, 2007, the U.S. Forest Service issued the FEIS for the proposed expansion of the
2 White Pass Ski Area.

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5 **26.** On June 14, 2007, the Forest Supervisors for the Gifford Pinchot National Forest and
6 Okanogan and Wenatchee National Forests issued a Record of Decision approving the expansion of the
7 White Pass Ski Area as discussed in the FEIS. The Supervisors further approved Amendment No. 19 to
8 the Gifford Pinchot National Forest Plan ("GPNFP") as part of the June 14, 2007 ROD. Amendment No.
9 19 amends the GPNFP's Riparian Area Standards and Guidelines such that it will allow construction of
10 ski trails, chairlifts, buildings, utilities and associated infrastructure within an area less than 100 feet
11 from the edges of lakes, streams, ponds, wet meadows, marshes and springs located in Riparian Areas.
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15 **27.** On August 31, 2007, plaintiffs filed an administrative appeal with the Regional Forester
16 for the United States Forest Service Pacific Northwest Region.
17

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19 **28.** On September 18, 2007, plaintiffs met with defendant Forest Service and White Pass
20 Company in an attempt to resolve this dispute.
21

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23 **29.** On October 19, 2007, plaintiffs' appeal was denied by the Appeal Deciding Officer with
24 the Regional Forest Office.
25

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27 **30.** On plaintiffs' information and belief, White Pass Company has begun cutting timber un-
28 der the authority granted by federal defendant's issuance of the ROD at issue herein.
29

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31 **31.** Plaintiffs have been required to expend costs and to obtain the services of separate law
32

1 firms, including attorneys, law clerks, and legal assistants to prosecute this action. Plaintiff HBPA is en-
 2 titled to costs of disbursements and costs of litigation, including reasonable attorney and expert witness
 3 fees, as provided for under the Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412(d).
 4

5 6 V. CAUSES OF ACTION

7 8 A. First Cause of Action: Violation of the Roadless Area Conservation Rule.

9 **32.** Plaintiffs hereby incorporate by this reference the allegations presented in all preceding
 10 paragraphs.
 11

12
 13 **33.** Under the Roadless Area Conservation Rule (“Roadless Rule”), 36 CFR § 294.10 *et seq.*
 14 (2001), road building and timber cutting associated with ski development is allowed only within the ex-
 15 isting boundaries of special use permit areas. Presumptively, roads cannot be built, and timber cutting
 16 cannot occur, in national forest roadless areas to expand ski areas unless such expansion has been ap-
 17 proved prior to the publication of the Rule in the federal Register (January 12, 2001). *See, e.g.*, 66 FR
 18 3244, 3260.
 19
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21
 22 **34.** Federal defendant acknowledges that “the 2001 [Roadless] Rule applies to management
 23 of the IRAs within and adjacent to the proposed expansion area.” FEIS at 3-448.
 24

25
 26 **35.** After the Roadless Rule was proposed, defendant White Pass Company sought to be ex-
 27 empted from its development restrictions. *Id.* After considering the request, the Forest Service refused to
 28 exempt White Pass Company from the Roadless Rule’s development restrictions. *Id.*
 29
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 32

1 lative actions are actions whose impacts “result[] from the incremental impact of the action when added
2 to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or
3 non-Federal) or person undertakes such other actions.” 40 C.F.R. § 1508.7.
4

5
6 **41.** The FEIS contains only two and a half pages that describe the cumulative effects on rec-
7 reation (FEIS 3-406 – 409). This assessment displays two tables that describe in narrative form the ef-
8 fects on backcountry recreation in the Upper Clear Fork Cowlitz River and Upper Tieton River water-
9 sheds. National Forest lands cover approximately 543,000 within the entire Cowlitz River watershed and
10 514,000 acres within the Naches River watershed, which encompasses the Tieton River watershed.
11 (Washington State Major Public Lands Acreages, Washington Department of Ecology, Olympia, WA,
12 2007, <http://www.ecy.wa.gov/services/gis/maps/wria/mpl/mplacreage.htm>). In comparison, the entire
13 Gifford Pinchot National Forest is 1,312,000 acres, the Wenatchee National Forest is over 2.2 million
14 acres, and the Mt. Baker-Snoqualmie NF is over 1.7 million acres. Recreational users in Washington
15 generally consider the “southern Cascades” to extend from the Columbia River to Snoqualmie Pass, and
16 on to Stevens Pass and/or Mission Ridge. Consequently, the appropriate area for cumulative impacts
17 analysis encompasses the White Pass, Crystal Mountain, Summit at Snoqualmie (including Alpental),
18 Stevens Pass and Mission Ridge developed ski areas. Accordingly, NEPA mandates that the scope of the
19 cumulative impacts analysis of the “southern Cascades” must be construed to include the several million
20 acres of federal public National Forest land contained in all of the developed ski areas from the Colum-
21 bia River to Snoqualmie Pass, and on to Stevens Pass and/or Mission Ridge. In comparison, the FEIS
22 cumulative effects analysis considers impacts only on the upper portions of watersheds that contain ap-
23 proximately a million acres of National Forest land and that contain no other developed ski areas.
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1 **42.** The discussion of cumulative effects in the FEIS, *see e.g.*, Table 3.11-5 and -6, has thus
2 been unlawfully constrained to address only those impacts to backcountry recreation within the White
3 Pass ski area or the adjacent Zig Zag Nordic and Snowshoe Trails, located across Highway 12 from the
4 ski area, not the area from the Columbia River to Snoqualmie Pass, and on to Stevens Pass and/or Mis-
5 sion Ridge mandated by NEPA. The Forest Service's failure to disclose or analyze these cumulative en-
6 vironmental impacts violates NEPA.
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10 **43.** The Forest Service decision approving the ROD and upholding the FEIS is arbitrary and
11 capricious, an abuse of discretion, not in accordance with law, and violates the National Environmental
12 Policy Act and its implementing regulations.
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16 **C. Third Cause of Action: NEPA - Failure to Analyze All Reasonable Alternatives.**
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18 **44.** Plaintiffs hereby incorporate by this reference the allegations presented in all preceding
19 paragraphs.
20
21

22 **45.** NEPA and its implementing regulations require that agencies “rigorously explore and ob-
23 jectively evaluate” all reasonable alternatives to the proposed action in the EIS. 42 U.S.C. § 4332(2)(C)-
24 (iii); 40 C.F.R. § 1502.14(a). An EIS is rendered inadequate by the existence of a viable but unexamined
25 alternative. *Methow Valley Citizens Council v. Regional Forester*, 833 F.2d 810, 815 (9th Cir. 1987),
26 *rev'd on other grounds, Robertson v. Methow Valley Citizens Council*, 490 U.S. 332 (1989). Environ-
27 mental review should focus on “reasonable alternatives to proposed actions that will avoid or minimize
28 adverse effects.” 40 C.F.R. 1500.2(e). Under NEPA, agencies are required to “study, develop, and de-
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1 scribe appropriate alternatives to recommended courses of action in any proposal which involves unre-
2 solved conflicts concerning alternative uses of available resources.” 42 U.S.C. § 4332(2)(E).
3
4

5 **46.** Forest Service directives recognize that permits for special (non-timber) uses must pro-
6 vide for a “real public service” and serve the “long-range public interest.” Forest Service Manual 2710.2
7 and 2710.3 The FSM stresses the Forest Service’s objective when issuing special permits is to advance
8 the agency’s goals, not those of the proponent:
9

10 A permit shall not be granted simply to provide a commercial profit-making opportunity.
11 The Forest Service is not required to accommodate a desire of an individual applicant. A
12 real public service or other justification must be evident... to show at least that the use
13 meets a public need and will *not* conflict with national forest objectives, programs, or
14 purposes.

15 FSM 2710.3 (emphasis added).
16

17 **47.** The range of alternatives considered in the FEIS is fundamentally inadequate because it
18 contains four alternatives for downhill skiing and no alternatives for the development of cross-country
19 facilities in the Pigtail and Hogback basins. Nordic ski development would present significantly fewer
20 adverse impacts on the environmental resources present in the Pigtail and Hogback basins. Numerous
21 comment letters requested that the Forest Service present a Nordic ski development, but such an alterna-
22 tive is absent from the FEIS.
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26 **48.** Further, the FEIS fails to consider any alternatives involving the development of winter
27 sports facilities at other locations within the applicable market area. The FEIS acknowledges that there
28 are a number of other existing ski areas within the market area, *i.e.* Crystal Mountain, Mission Ridge,
29 Stevens Pass, and the Summit at Snoqualmie Pass.
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1 **49.** NEPA requires the Forest Service to consider the development of alternative winter
2 sports sites in this FEIS at issue herein — not in some future environmental document. *Methow Valley*
3 *Citizens Council v. Regional Forester*, 833 F.2d at 815 (“it should have appeared obvious that investiga-
4 tion was warranted to determine whether the development of winter sport opportunities could be pursued
5 at alternative sites.”). Here, federal defendant should have specifically identified the market and geo-
6 graphic pool of skiers targeted and then considered alternative ski development within that market area.
7 *Id.* at 816.

10
11 **50.** However, the FEIS provides no meaningful consideration of the development of alterna-
12 tive sites or how well such development may fulfill the needs of the public within the market area. This
13 approach is contrary to NEPA and the Forest Service’s own policies and regulations because it limits the
14 choice of alternatives to those that would further the profit-making objectives for the White Pass Com-
15 pany, without regard to the overall public interest for winter sports facilities within the entire market
16 area, not just at White Pass. The Forest Service is simply providing a commercial profit-making oppor-
17 tunity for this proponent without any real analysis of public service and need within this entire market
18 area as required by the Forest Service manual. Consequently, the FEIS violates NEPA’s fundamental
19 requirement that an adequate range of reasonable alternatives be considered.
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25 **51.** The FEIS fails to address the option of Nordic skiing development in the Pigtail and
26 Hogback basins. Similarly, the FEIS does not address the potential to satisfy the any public desire for
27 Alpine skiing facilities at cites other than at White Pass. The federal defendant instead unlawfully lim-
28 ited its range of contemplated options to those which focus primarily on the profit-making objectives of
29 the White Pass Company. The Forest Service’s failure to analyze any alternatives for Nordic skiing in
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1 the Pigtail and Hogback basins and its exclusive focus on new development occurring at the White Pass
2 site violates NEPA.

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5 **52.** The Forest Service decision approving the ROD and upholding the FEIS is arbitrary and
6 capricious, an abuse of discretion, not in accordance with law, and violates the National Environmental
7 Policy Act and its implementing regulations.
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10 **D. Fourth Cause of Action: NEPA – Failure to Consider Environmental Impacts of Electrical**
11 **Utility Upgrades for the Proposed Expansion.**
12

13 **53.** Plaintiffs hereby incorporate by this reference the allegations presented in all preceding
14 paragraphs.
15

16
17 **54.** The FEIS fails to adequately discuss the ramifications of upgraded electrical power deliv-
18 ery to the White Pass ski area to meet the demands of the proposed expansion. The FEIS acknowledges
19 that the power capacity of the existing line is not capable of delivering power needed for the proposed
20 expansion. FEIS at 3-429, 2-32, and 2-40. The Forest Service selected Alternative (Modified 4) will re-
21 quire an upgrade of the power line from a capacity of 1550kW to 4000kW, an increase of over 150%.
22 FEIS at 3-429, 2-32, and 2-40.
23
24

25
26 **55.** A DEIS comment letter from the Benton Rural Electric Association (“BREA”) — the
27 utility that provides electrical power to the White Pass ski area — to the Forest Service, dated February
28 1, 2005, stated:
29

30 Expansion will require the rebuilding of the power line into the area. *It will also require*
31 *that the power system reliability be improved by widening the right of way, and the re-*
32 *moval of danger trees.* Danger trees are defined by the United States Department of Agri-

1 culture as trees which when falling would reach within 5 feet of a point underneath the
2 outside conductor.

3 *See*, Exhibit D, attached to plaintiffs' administrative appeal (emphasis added).
4

5
6 **56.** When it considered the Benton Rural Electric Association's comments, the Agency sim-
7 ply omitted citation to the passage quoted above. *See, e.g.*, Response to Comments, FEIS Vol. III at
8 RTC-152.
9

10
11 **57.** Furthermore, there is no discussion in the FEIS of fire and electrocution hazard of an up-
12 graded power corridor nor of forest fires, loss of life and property, as a result of a unsafe power corridor
13 lined with "danger trees". A Seattle Post-Intelligencer article dated, August 22, 2007, entitled "State
14 sues Okanogan utility over wildfire cost" details a 2005 wildfire caused by a danger tree falling on a
15 utility corridor power line that burned over 1,000 acres, destroyed a sawmill, threatened homes and life,
16 and cost \$161,000 in fire fighting costs. Exhibit F, attached to plaintiffs' administrative appeal.
17
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19
20 **58.** The FEIS does not directly address the BREA's indication that the utility corridor will
21 need to be widened and "danger trees" cut nor does it address the risk and liability potential associated
22 with failure to properly maintain adequate clearances in the utility corridor. Instead, federal defendant
23 summarily concludes, without reference to any evidence, that "[b]ased on recent experience, it appears
24 to be technically feasible to utilize the existing powerline corridor with upgraded conductors and utility
25 poles." FEIS at 3-429.
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29 **59.** The Forest Service decision approving the ROD and upholding the FEIS is arbitrary and
30 capricious, an abuse of discretion, not in accordance with law, and violates the National Environmental
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1 Policy Act and its implementing regulations.

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4 **E. Fifth Cause of Action: NEPA – Failure to Adequately Address Sewage Issues.**

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6 **60.** Plaintiffs hereby incorporate by this reference the allegations presented in all preceding
7 paragraphs.

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10 **61.** There is a documented history of ongoing sewage problems, failing drain fields, and inci-
11 dents of surfacing sewage at White Pass Ski Area for the past 40 years. The White Pass Company has
12 been cited for violation of public health laws and the Forest Service Special Use Permit on a number of
13 occasions during the last 40 years. The Forest Service has been aware of the serious sewage problems at
14 White Pass Ski Area. The following quotations were excerpted from Forest Service documents dated
15 White Pass Ski Area. The following quotations were excerpted from Forest Service documents dated
16 from the 1960's up to the present:

17
18 “The drainfield area needs repairs. The draining tank is still not put together. There are
19 two separate areas where effluent is pouring over the ground and forming large pools at
20 the lower side of the drainfield area. We can not tolerate this any longer. You stated late
21 last fall that this would be taken care of this spring 1968. Now it is September 11, 1968
22 and the system is still not working.” Exhibit I, attached to plaintiffs’ administrative ap-
23 peal (FS demand letter to White Pass Corp. dated 9/11/68).

24 “The existing large drainfield which serves the [White Pass Corp.] facilities north of the
25 highway has failed. The failure consists of surfacing effluent in approximately 5-7 sepa-
26 rate locations. . . This condition was noted last fall. At that time, the permittee was to
27 have rectified the problem.” Exhibit J, attached to plaintiffs’ administrative appeal (FS
28 memo dated 10/22/68).

29 “The drain field for the day lodge at White Pass is failing and the effluent is being dis-
30 charged into a ditch adjacent to the highway.” Exhibit K, attached to plaintiffs’ adminis-
31 trative appeal (FS memo dated 11/23/70).

32 “It has come to the attention of this office that the sewage disposal system serving the
Lodge and Restaurant at White Pass is failing.” Exhibit L, attached to plaintiffs’ adminis-
trative appeal (Lewis Cty. Health Dist. demand ltr. to White Pass Corp. dated 4/28/81).

1 “To date, no real proposal for a solution to the seasonal overflow problem has been pre-
2 sented [by White Pass Corp.] . . . As usual, White Pass is not amenable to expending
3 funds for a long term correction of the sewage system.” Exhibit M, attached to plaintiffs’
4 administrative appeal (Lewis Cty. Health Dist. ltr. to FS seeking assistance with continu-
ing drainfield failure. dated 7/6/81).

5 “The existing [septic] tank volume is 10,860 gallons, far short of the needed capacity.”
6 Exhibit N, attached to plaintiffs’ administrative appeal, at 2 (Ltr. from White Pass Corp.
7 engineers to FS describing failings of septic system at that time, dated 7/6/84).

8 “[T]his office was made aware of the problem which you are having with [your] drain-
9 field. The problem is surfacing sewage, which according to you, occurs primarily during
10 peak usage times. . . . surfacing sewage . . . is considered to be a public health hazard. If
11 the problem remains uncorrected, the Health Department may be forced to order all
buildings utilizing the system to be vacated.” Exhibit O, attached to plaintiffs’ adminis-
trative appeal (Demand ltr. from Yakima Health Dist. to White Pass Corp. dated 8/1/89).

12 “[You have a]failing drain field with surfacing sewage. . . . [I]f sewage is surfacing at any
13 time after October 15, 1990, it will force the Health District into an enforcement mode.
14 Since the transient population at the facilities is so great, the chances for disease trans-
15 mission are very high. The Health District can no longer allow this public health hazard
16 to continue.” Exhibit P, attached to plaintiffs’ administrative appeal (Demand ltr. from
Yakima Health Dist. to White Pass Corp. dated 9/4/90 (emphasis in original)).

17 “[There are] ongoing White Pass sewage problems. [Their] sewage system has been fail-
18 ing for at least the past five years, according to White Pass officials. . . . Yakima Health
District’s position is that the White Pass sewage problem must be fixed without delay.”
19 Exhibit Q, attached to plaintiffs’ administrative appeal (Ltr. from Yakima Health Dist. to
20 Wash. Dept. of Ecology dated 9/14/90).

21 “The Forest Service has a long documented history of failing septic systems on White
22 Pass, and Forest Service staff were aware of the Condo complex’s failing sewage systems
23 in July 1989. The [1990 White Pass expansion] FEIS does not discuss these issues. . . .
24 Surfacing sewage, especially that coming from such a diverse transient population, is un-
25 acceptable from a public health perspective at any time. Exhibit R, attached to plaintiffs’
administrative appeal, at 2 (Ltr. from Yakima Health Dist. to FS re. White Pass septic
field problems and flaws in EIS, dated 9/20/90).

26 “Chris Coffin was working for the Yakima Health District in 1993 and investigated a re-
27 port of discharge of sewage into Leech Lake, and confirmed there was a problem.”
28 2/23/2005. Exhibit H, attached to plaintiffs’ administrative appeal, at 2.

29 “There is no record of a permit and its unlikely that system meets modern code or would
30 be considered adequate to accept any additional flows” 2/23/2005. *Id.* at 1.

1 **62.** Despite the documented history of sewage problems at White Pass Ski Area, there is no
 2 discussion of it in the FEIS. Furthermore, the FEIS relies on [fecal E. coli] measurements in Leech Lake
 3 that are over 18 years old. FEIS pg 3-71. In addition, no water samples have ever been taken during ski
 4 season when the sewage system is running at normal capacity. FEIS Table 3.3-8. As noted above, this
 5 site historically manifests septic field problems primarily during the ski season. *See. e.g.,* Exhibit O, at-
 6 tached to plaintiffs' administrative appeal ("The problem is surfacing sewage, which according to you,
 7 occurs primarily during peak usage time.").

11 **63.** The U.S. Environmental Protection Agency ("EPA") stated in a comment letter dated
 12 February 18, 2005:

14 The water quality data in table 3.3-8 includes ortho-phosphorus levels that appear to be elevated
 15 and dissolved oxygen levels that appear to be lower than what would be expected for the re-
 16 corded water temperatures.

17 Exhibit G, attached to plaintiffs' administrative appeal, at 5. Although the EPA requested the FEIS ex-
 18 plain this discrepancy, no discussion was provided in the FEIS.

20 **64.** The Washington Department of Ecology ("Ecology") wrote in a comment letter dated
 21 February 20, 2005:

23 The size of the systems are such that they should be covered by State wastewater dis-
 24 charge permits from Ecology.- Ecology has never issued a permit for either facility. . .
 25 The chemical analysis of Leech Lake included in table 3.3-8 are old (1990) and are in-
 26 dicative of a lake of a relatively high trophic status (high phosphorus, dissolved oxygen
 27 below saturation). The abundance of emergent plants and the epiphytic algae growing on
 28 them in recent years are consistent with an elevated trophic status, especially in compari-
 son to Deer and Sand Lake a mile or so to the north in a similar setting (except for the
 human activity adjacent to Leech Lake).

29 FEIS Volume 3. Ecology continued:

31 Leech Lake appears to have an elevated trophic status as a result of the developments
 32 around White Pass, including failed wastewater systems. The trophic status of Leech
 Lake needs to be reviewed in the context of the "natural" conditions and the impact of the

development assessed. A more complete assessment of the wastewater systems needs to be completed, what permits have been issued for the wastewater systems? Why haven't the agreed upon repairs been completed? What is the impact of not completing the repairs? Septic systems are best suited to steady usage, the variation in flows during cold weather (and with long lines to the drain fields) and the extreme variation through the year are likely to result in degraded performance. An assessment of the performance of both septic systems is needed since the drainfield [is?] adjacent to streams of the highest water quality classification in Washington State.

Id. at 3.

65. The FEIS fails to adequately discuss the ongoing sewage problems at White Pass and how they impact the surrounding waters as required by NEPA.

66. The Forest Service decision approving the ROD and upholding the FEIS is arbitrary and capricious, an abuse of discretion, not in accordance with law, and violates the National Environmental Policy Act and its implementing regulations.

F. Sixth Cause of Action: NEPA — Failure to Adequately Address Climate Change Impacts.

67. Plaintiffs hereby incorporate by this reference the allegations presented in all preceding paragraphs.

68. Warming of the climate system is unequivocal, as is now evident from observed increases in global average air and ocean temperatures, widespread melting of snow and ice, and rising global mean sea level. *See, e.g.,* Richard Alley, Terje Berntsen, Nathaniel Bindoff *et al.*, "Summary for Policymakers: A Report of Working Group I of the Intergovernmental Panel on Climate Change" at 5. Exhibit U, attached to plaintiffs' administrative appeal.

69. The warming rate for the Pacific Northwest over the next century is projected to be in the range of .1-.6°C/ decade. Climate records show that the Northwest (regionally averaged) has warmed about 1.0 °C since 1900, or about 50% more than the global average warming over the same period. Regularly collected measurements indicate that Northwest springtime snow pack from the western Rockies to the coast, and from the central Sierras in California to southern British Columbia, declined substantially between 1950 and 1997 in part due to a reduction in precipitation and in part due to rising winter temperatures during this period. These measurements indicate that for many individual recording sites decreases in this period were up to 60% in April 1st snow pack for the “warmest” locations in the Northwest – areas including the lower elevations of the Cascades and the Olympic mountains in Washington. *See, e.g.,* Robert Bilby, Susan Hanna, Michael Healey *et al.*, “Independent Scientific Advisory Board: Climate Change Impacts on Columbia River Basin Fish and Wildlife” at 12. Exhibit V, attached to plaintiffs’ administrative appeal.

70. Changes have already been observed in many species’ ranges that are consistent with changes in climate. The changes include poleward and elevationally upward movements of many insects, birds, trees and forbs. *See, e.g.,* Neil Adger, Pramod Aggarwal, Shardul Agrawala *et al.*, “Summary for Policymakers: Climate Change 2007: Impacts, Adaptation, and Vulnerability” at 2. Exhibit W, attached to plaintiffs’ administrative appeal. Future climate change may lead to fragmentation of suitable habitats that may inhibit adjustment of plants and wildlife to climate change through range shifts. “Independent Scientific Advisory Board: Climate Change Impacts on Columbia River Basin Fish and Wildlife,” *supra* at iii. Locations that are likely to be sensitive to climate change and have high ecological value are sites where establishing adequate protective measures, including reserve areas, will be a key component of any effort to address changing climate. *Id.* at vii.

1 **71.** In the western United States, steep environmental gradients (for instance, in topography,
 2 elevation, and water availability) mean that there will be relatively few areas where a species' potential
 3 range does not shift significantly under future climate scenarios. The steep environmental gradients also
 4 mean that movement corridors, which would facilitate the migration of plants and animals to more suit-
 5 able areas as climate changes, may be limited and should be given particular consideration in planning
 6 to mitigate for climate change. Many assessments of likely ecological responses to climate change con-
 7 clude that several community types that are significant in the Columbia River Basin are likely to de-
 8 crease greatly in the area or disappear from the region. These include alpine habitats, subalpine spruce-
 9 fir forests of the type present in the White Pass area. *Id.* at 24.

13
 14 **72.** NEPA requires that prior to agency decision-making, the agency must review and pre-
 15 pare an adequate EIS.

16
 17
 18 **73.** The Forest Service did not adequately assess the impact of climate change on the pro-
 19 posed project area and the project itself. Climate change is likely to affect sensitive species that currently
 20 utilize habitat in the proposed expansion area, including wolverine. Because alpine and subalpine habi-
 21 tats will shrink due to climate change, areas that currently support these types of habitat are very signifi-
 22 cant to the protection of wildlife and other species that depend on these habitats.

23
 24
 25
 26 **74.** The Forest Service also failed to adequately assess the impact of climate change on the
 27 Hogback Roadless Area's hydrology. Climate change will result in changes in temperature and precipi-
 28 tation that will alter snow pack, stream flow and water quality:

- 29
 30 **A.** Warmer temperatures will result in more precipitation falling as rain rather than snow,
 31 **B.** Snow pack will diminish,
 32 **C.** Stream flow timing will be altered and peak river flows will likely increase, and

1 **D.** Water temperatures will continue to rise.

2 “Independent Scientific Advisory Board: Climate Change Impacts on Columbia River Basin Fish and
3 Wildlife,” *supra* at iii; “Summary for Policymakers: Climate Change 2007: Impacts, Adaptation, and
4 Vulnerability” at 2,5,10. Exhibit W, attached to plaintiffs’ administrative appeal. These changes will di-
5 rectly impact the viability of a ski resort in the area, including its economic viability) and should be con-
6 sidered in any analysis of expansion. Trading the protection of sensitive species for ski area expansion in
7 an area likely to be heavily influenced by climate change isn’t a wise use of public lands.

8
9 **75.** The Forest Service’s decision to approve the ROD based on an inadequate FEIS is
10 arbitrary and capricious, an abuse of discretion, not in accordance with law, and violates the National
11 Environmental Policy Act and its implementing regulations.
12
13

14
15 **G. Seventh Cause of Action: NEPA – Violation of Requirement to Adequately Address the**
16 **Purpose and Need and Pubic Interest for the Expansion Proposal.**

17
18 **76.** Plaintiffs hereby incorporate by this reference the allegations presented in all preceding
19 paragraphs.
20

21 **77.** NEPA requires that prior to agency decision-making, the agency must review and pre-
22 pare an adequate FEIS.
23

24 **78.** The Forest Service’s ROD was based on an inadequate FEIS. The FEIS discussion was
25 inadequate with respect to numerous significant environmental and other concerns. The FEIS failed to
26 analyze, or failed to adequately analyze the appropriate purpose and need and economic rationale for the
27 proposed expansion.
28
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1 **79.** The FEIS failed also to adequately address whether the ski area expansion permit was in
2 the public interest.

3
4
5 **80.** The Forest Service's decision to approve a ROD based on an inadequate FEIS is arbitrary
6 and capricious, an abuse of discretion, not in accordance with law, and violates the National Environ-
7 mental Policy Act and its implementing regulations.
8

9
10 **H. Eighth Cause of Action: NFMA – Violation of National Forest Plan Visual Resource**
11 **Management Standards.**

12
13 **81.** Plaintiffs hereby incorporate by this reference the allegations presented in all preceding
14 paragraphs.
15

16
17 **82.** The NFMA requires all forest uses to be "consistent with the Land Management Plans."
18 16 U.S.C. § 1604(i). NFMA regulations require Forest Plans to contain Visual Quality Objectives
19 (VQOs) for forest planned use zones and Visual Management System ("VMS"). Because NFMA regula-
20 tions require plans to include VQOs, the VQOs impose legal limits on the use of National Forest lands.
21 The Scenery Management System (SMS) was developed in 1995 to eventually replace the VMS.
22
23

24
25 **83.** The FEIS states:

26 At the time of this FEIS, neither the Gifford Pinchot nor the Wenatchee National Forest
27 Land and Resource Management Plans have been updated. For this FEIS, both the VMS
28 and SMS will be used to describe the existing landscape and evaluate the range of alter-
29 natives' effects on the landscape, as initially directed by the Chief of the USFS and sub-
sequent direction (USDA 1995,1996,1997b,1998e).

30 FEIS 3-459.
31
32

1 **84.** As alleged below, federal defendant has violated NFMA regarding its implementation of
 2 both the VMS and SMS.
 3

4
 5 **THE EXPANSION DIRECTLY CONTRADICTS VMS.**

6 **85.** The Forest Service has assigned a “retention” VQO of the entire area of the proposed
 7 White Pass Ski Area expansion. The Wenatchee National Forests Plan defines a “retention” VQO as an
 8 “area in which changes to the landscape are not visually evident to the average person unless pointed
 9 out. They appear to be natural.” WNFP at II-II. The GPNFP glossary defines a “retention” VQO as
 10 “management activities should not be evident to the casual forest visitor.”
 11
 12

13
 14 **86.** The Wenatchee National Forest Plan further states on page IV-65, “visual quality objec-
 15 tives shown represent minimums, higher ones may be achieved.” The GPNF Plan further states that the:
 16 “Visual Quality Objectives assigned in each Management Area should be the minimum level acceptable
 17 and should be met by all activities.” GPNF IV-48.
 18
 19

20
 21 **87.** The construction of chair lifts, lift terminals, towers, ski runs, a parking lot, and lodge fa-
 22 cilities will be evident to any person on the Pacific Crest National Scenic Trail or in the White Pass
 23 Area. These developments will not appear to be natural. The proposed expansion will violate the Visual
 24 Quality Objective of Retention established by the Forest Service and the FEIS acknowledges this:
 25

26 Increased development in Pigtail and Hogback basins under Alternative 2, Modified al-
 27 ternative 4, and Alternative 6, would result in a more developed character of the Hogback
 28 Basin, with a VQO of retention[.] . . Visual impacts would be irretrievable for the life of
 29 White Pass operations...

30 FEIS 3.17.3.6 and 3.17.4.6.
 31
 32

1 **88.** The decision approving the ROD violates the VQOs for both the Okanogan and We-
 2 natchee and Gifford Pinchot National Forests and therefore NFMA and its implementing regulations.
 3 The ROD is contrary to law.
 4

5
 6 **THE EXPANSION DIRECTLY CONTRADICTS SMS.**
 7

8 **89.** The Scenery Management System (“SMS”) terminology differs from the VMS. The SMS
 9 pertains primarily to the social/cultural dimension of ecosystem management, but also has links to the
 10 biological and physical. The SMS uses four distance zones to describe the part of a characteristic land-
 11 scape that is being inventoried. These consist of immediate foreground, foreground, middle ground and
 12 background. FEIS 3-459 (“Key elements and two of the most important aspects of the new SMS process
 13 are ‘sense of place’ and ‘Special Places.’”).
 14
 15
 16

17 **90.** Federal defendant has established that “Special Places are important primarily as destina-
 18 tions. They occur at different scales of the ecosystem ranging from an entire national forest or ranger
 19 district to a more localized area to a very specific site that may encompass only a few acres.” FEIS 3-
 20 459. “The SMS measures the degree of “intactness” and “wholeness” of the landscape with “scenic in-
 21 tegrity.” FEIS 3-459.
 22
 23
 24

25 **91.** The Hogback Basin “sense of place” is described in FEIS as:
 26 1. Roaded natural
 27 2. Unique Vegetative Community
 28 3. Outstanding Destination for Regional Backcountry Skiing.
 29 FEIS Table 3.15-1.
 30
 31
 32

1 **92.** The Scenic Integrity Level of the proposed expansion area as shown in FEIS Table 3.15-
2 is “High” with the “Perception [of the] Degree of Deviation” as “Not Evident” and the area “Appears
3 Unaltered.”
4

5
6 **93.** The proposed development of the Hogback and Pigtail Basin will dramatically alter the
7 Scenic Integrity and its unique “Sense of Place” from all four viewpoints and therefore contradicts the
8 Scenery Management System directives. The Record of Decision is contrary to law.
9

10
11 **94.** The Forest Service's action regarding the VMS and SMS in this matter violates “sense of
12 place” and “Special Places” mandates established by the Wenatchee and Gifford Pinchot National For-
13 ests Plans and therefore NFMA and its implementing regulations. The ROD is contrary to law.
14
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16
17 **95.** The Forest Service decision approving the ROD and upholding the FEIS is arbitrary and
18 capricious, an abuse of discretion, not in accordance with law, and violates the NFMA and its imple-
19 menting regulations.
20

21
22 **I. Ninth Cause of Action: Violation of NFMA, Aquatic Conservation Strategies, and**
23 **Gifford Pinchot National Forest Plan’s Prohibitions on Development Adjacent to**
24 **Aquatic Resources.**

25 **96.** Plaintiffs hereby incorporate by this reference the allegations presented in all preceding
26 paragraphs.
27

28
29 **97.** The National Forest Management Act requires that all forest uses be “consistent with
30 land management plans.” 16 U.S.C. § 1604(i).
31
32

1 **98.** In 1994, the U.S. Forest Service issued the Forest Service and Bureau of Land Manage-
 2 ment planning documents within the range of the Northern Spotted Owl, what is commonly known as
 3 the Northwest Forest Plan (“NWFP”). *See* 59 Fed. Reg. 18788 (April 20, 1994); *Seattle Audubon Soci-*
 4 *ety v. Lyons*, 871 F. Supp. 1291, 1322 (W.D. Wash. 1994), *aff’d* 80 F. 3d 1401 (9th Cir. 1996). The
 5 Northwest Forest Plan provides direction for management of habitat for late-successional and old-
 6 growth forest species on Forest Service and Bureau of Land Management lands in the Pacific Northwest
 7 in a manner that provides for the species’ long-term health. The Northwest Forest Plan amended and
 8 was incorporated into the planning documents of nineteen National Forests and seven Bureau of Land
 9 Management districts within the range of the northern spotted owl, including western Oregon, western
 10 Washington, and northwestern California. The core components of the Northwest Forest Plan include a
 11 network of protected habitat areas, including: congressionally protected areas such as wilderness and
 12 wild and scenic rivers, late-successional reserves and riparian reserves, key watersheds; an aquatic con-
 13 servation strategy, and a series of standards and guidelines that guide management actions, including
 14 requirements to survey and protect habitat for certain rare and uncommon species. Those standards and
 15 guidelines are described and contained in the Record of Decision and attached Appendix A: *Standards*
 16 *and Guidelines for Management of Habitat for Late-Successional and Old-Growth Forest Related Spe-*
 17 *cies within the Range of the Northern Spotted Owl* (“Northwest Forest Plan ROD”) signed by the Secre-
 18 taries of Agriculture and Interior in April 1994.

19 **99.** The NWFP is a “land management plan” as defined by NFMA. Accordingly, all forest
 20 uses must be consistent with the NWFP. 16 U.S.C. § 1604(i).

21 **100.** One of the fundamental goals of the NWFP is achieving the objectives of the Aquatic
 22 Conservation Strategies (“ACS”). The ACS is intended to “restore and maintain the ecological health of
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1 watersheds and aquatic ecosystems contained within them on public lands.” The ACS, through the NWFP,
2 requires agencies to manage riparian-dependent resources in order to maintain existing conditions or to
3 implement actions to restore irreparable aquatic conditions. The NWFP establishes widths for Riparian
4 Reserves, in which riparian resources receive primary emphasis, and to which special guidelines apply.
5 Changes to these widths must be scientifically based and fully documented.
6
7
8

9 **101.** The NWFP’s Standards and Guidelines (“NWFP S&G”) emphasize an agency’s affirma-
10 tive duty to protect the status quo of the riparian system: “Complying with the Aquatic Conservation
11 Strategy objectives means that an agency must manage the riparian-dependent resources to maintain the
12 existing condition or implement actions to restore conditions.” NWFP S&G B-10. Moreover, “Manage-
13 ment actions that do not maintain the existing condition or lead to improved conditions in the long term
14 would not “meet” the intent of the Aquatic Conservation Strategy and thus, should not be implemented.”
15 *Id.* “Standards and guidelines prohibit and regulate activities in Riparian Reserves that retard or prevent
16 attainment of the Aquatic Conservation Strategy objectives.” *Id.* at B-12. “Under the Aquatic Conserva-
17 tion Strategy, Riparian Reserves are used to maintain and restore riparian structures and functions of in-
18 termittent streams, confer benefits to riparian-dependent and associated species other than fish, enhance
19 habitat conservation for organisms that are dependent on the transition zones between upslope and ripar-
20 ian areas, improve travel and dispersal corridors for many terrestrial animals and plants, and provide for
21 greater connectivity of the watershed.” *Id.* at B-13.
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28 **102.** The NWFP gives “highest priority” to protecting the few remaining, high quality roadless
29 areas in Key Watersheds. *Id.* at B-9.
30
31
32

1 **103.** [delete spacing]The Gifford Pinchot National Forest Plan (“GPNFP”) prohibits newly
 2 developed recreation sites from expanding within the riparian influence area of aquatic resources. The
 3 GPNFP further requires that new recreation sites be setback at least 100 feet from the edges of lakes,
 4 streams, ponds, wetlands, meadows, marshes, and springs. Because the NWFP establishes minimum
 5 standards, the GPNFP setbacks apply only where the NWFP would otherwise allow development within
 6 100 feet of aquatic sites.
 7
 8
 9

10 **104.** FEIS Figure 2-5 and Figure 3-25 clearly illustrate how Riparian Reserves, Riparian Influ-
 11 ence Areas, wetlands, streams and ponds are specifically targeted for maximum development. The focus
 12 of development for the proposed expansion is almost entirely within Riparian Reserves of the Pigtail and
 13 Hogback Basins. FEIS Figure 3-25. These two “water basins” form the entire Tier 2 Key Watershed
 14 drainage in the proposed project area:
 15
 16

17 **A.** The entire Basin Chair 6 including the lower and upper lift terminals, lift towers, associated
 18 cleared ski runs, and ditched utility corridors is located in Riparian Reserves.

19 **B.** The entire mid-mountain lodge with associated drain field, and ditched utility corridors is lo-
 20 cated in Riparian Reserves.

21 **C.** The Hogback Express Chair 7 lower terminal, most of its associated lift towers, cleared ski
 22 runs and ditched utility corridors are located in Riparian Reserves.
 23

24 **105.** The 767 acre expansion area is located within the White Pass Inventoried Roadless Area.
 25 In addition, the expansion area is within an ACS Tier II Key Watershed. Ski facilities are to be con-
 26 structed and operated within 100 feet of aquatic sites.
 27
 28
 29

30 **106.** Federal Defendant admits that the project “would result in an increase of solar exposure
 31 reaching streams and wetlands, stemming from the loss of vegetation. Additionally, all Action alterna-
 32

1 tives would increase the number of stream crossings, and increase the amount of potentially unstable
2 stream banks.” FEIS 3-498 (“Unavoidable Adverse Impacts” § 3.17.3). Over 25 acres in Riparian Re-
3 serves will be directly impacted by the proposed action. Table 3.3-14.
4

5
6 **107.** Because the proposed construction and development in the White Pass IRA and the Key
7 Watershed is directly contrary to the 1994 NWFP and the GPNFP, federal defendant’s approval of the
8 ROD directly violates the National Forest Management Act and is thus contrary to law.
9

10
11 **J. Tenth Cause of Action: Violation of the ACS for Watershed Restoration.**
12

13 **108.** Plaintiffs hereby incorporate by this reference the allegations presented in all preceding
14 paragraphs.
15

16
17 **109.** The waters draining the Hogback Basin meet State of Washington Class AA (excep-
18 tional) standards. FEIS 3-68. This is the highest standard obtainable. “The White Pass Analysis area is a
19 source of exceptional quality waters providing beneficial uses for residents, fish, [and] wildlife in both
20 Eastern and Western Washington.” 1998 FEIS 192. By degrading the water quality and adversely affect-
21 ing riparian dependent species, the proposed action will not maintain the existing condition or lead to
22 improved conditions and thereby violates the ACS and its watershed restoration element.
23
24

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26 **110.** Because the proposed construction and development in the White Pass IRA and the Key
27 Watershed is directly contrary to the 1994 NWFP and the ACS for watershed restoration, federal defen-
28 dant’s approval of the ROD directly violates the National Forest Management Act and is thus contrary to
29 law.
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K. Eleventh Cause of Action: The Watershed Analysis is Fundamentally Flawed Because the Riparian Influence Areas are Incorrectly Invoked and Calculated.

111. Plaintiffs hereby incorporate by this reference the allegations presented in all preceding paragraphs.

112. The NWFP's standards and guidelines supersede direction in Long Range Management Plans ("LRMPs") unless the LRMP direction "is more restrictive or provides greater benefits to late-successional forest related species." NWFP S&G A-6. The Northwest Forest Plan states that Watershed Analysis is the appropriate place to determine correct Riparian Reserve boundaries. Watershed Analysis has been completed for both watersheds contained within the proposed expansion boundaries, and these analyses' adopted the Riparian Reserve widths recommended by the NWFP.

113. However, the FEIS Watershed analysis relies on a narrower measure than the full Riparian Reserve boundaries; "the [Riparian Influence Area ("RIA")] boundaries for analysis of riparian functions." FEIS 3-59. "The RIAs are used to analyze particular riparian functions that occur only at that scale. These riparian functions include sediment filtration, stream bank stability, floodwater storage, LWD input to streams, stream channel shade, and stabilizing stream banks via root structure." *Id.*

114. Moreover, the FEIS erroneously eliminates wetland and pond RIAs in the project area. Even though there are numerous wetland areas depicted in the project area, none have a corresponding RIA. FEIS Figure 3-29 and Figure 3-20. The FEIS acknowledges on page 3-58 "the RIA for wetlands was not evaluated because the required 300 foot buffer on the 114 mapped wetlands within the White Pass study Area does not provide a riparian associated measure from which to gain information concern-

ing impacts to actual riparian zones. That is, including the 300 foot buffer analysis for wetland RIAs would duplicate the analysis performed for Riparian Reserves.” FEIS 3-58.

115. The default width of Riparian Influence Area around a wetland less than one acre, of which is the case of most if not all of the wetlands in the White Pass project area, is twice the default width required for Riparian Reserves. FEIS Table 3.3. Therefore the acreage affected by the development is not the same as depicted in the Riparian Reserve, but in fact is much larger. It clear in FEIS Figure 3-29 how the RIAs associated with wetlands and ponds are dramatically impacted by the proposed development especially at the base terminal of Chair 6, the mid-mountain lodge, and the grading of Holiday Run when the correct buffer widths are implemented. This is a serious flaw of the Watershed Analysis considering the whole project is dependent on Amendment 19, which, if approved, would allow extensive development within these currently protected RIAs.

116. Because the federal defendant’s Watershed Analysis improperly substituted RIAs for Riparian Reserves to provide a narrower scope of protection and because, further, federal defendant incorrectly calculated the RIAs, the ROD is directly contrary to the 1994 NWFP and the National Forest Management Act and is thus contrary to law.

L. Twelfth Cause of Action: Violation of Forest Service Regulations for Amending Forest Plans.

117. Plaintiffs hereby incorporate by this reference the allegations presented in all preceding paragraphs.

1 **118.** Forest Service regulations require implementation of a vigorous process, including spe-
2 cial notice and comment requirements for “significant” amendments to National Forest Plans.
3

4
5 **119.** Amendment 19 significantly alters the multiple use goals and objectives for long-term
6 land and resource management by allowing construction and commercial development activities in ri-
7 parian areas across 1,572 acres covered by the Special Use Permit at issue, including inventoried
8 roadless areas and within a Key Watershed. The construction and operation of the ski runs, lodge and
9 chair lift facilities, will result in material changes to — and limitation of — multiple use management
10 options previously applicable to the affected areas. The impacts of development in the targeted riparian
11 areas will directly and irreversibly undermine the management options established by the NWFP’s
12 Aquatic Conservation Strategy. Therefore, Amendment 19 directly contradicts the Aquatic Conservation
13 Strategies for Key Watersheds in the 1994 Northwest Forest Plan.
14
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18 **120.** Piecemeal amendments at the local level, such as Amendment 19 to the GPNFP, will
19 have important effects on the entire NWFP and will significantly alter the long-term relationship be-
20 tween the levels of multiple use goals and the services originally protected by irretrievably removing the
21 highest quality habitat in the key watershed system. Therefore, the proposed amendment is a “significant
22 amendment” and must follow the same procedures that are required for developing and approving the
23 NWFP.
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28 **121.** The decision of approving Amendment 19 to the GPNFP violates Forest Service regula-
29 tions implementing the NFMA and is contrary to law.
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M. Thirteenth Cause of Action: Amendment 19 of the GPNPF Contradicts the NWFP's Prohibition of Timber Cutting in Riparian Reserves.

122. Plaintiffs hereby incorporate by this reference the allegations presented in all preceding paragraphs.

123. The entire 767-acre expansion area is within the White Pass Inventoried Roadless Area, and is in an Aquatic Conservation Strategy Tier 2 Key Watershed. FEIS at 1-2 and 1-23. In addition, the project area includes numerous intermittent streams, wetlands and ponds with overlapping Riparian Reserves. FEIS Figure 3-25. The Record of Decision for the "Northwest Forest Plan" places "highest priority" to protect these remaining high quality Key Watersheds by prohibiting timber harvest in Riparian Reserves. NWFP C-31.

124. Amendment 19 to the GNFP allows for 17 acres of "full clearing" and over 7 acres of "tree removal" within Riparian Reserves for construction of "ski trails, chairlifts, buildings, utilities and associated infrastructure." FEIS 1-12 , 2-17, Tables 2.3.1-2 and 2.3.4-3, and Figure 3-25. The FEIS admits that one of the unavoidable adverse affects of the proposal would be "clearing in forest stands with old-growth characteristics." FEIS 3-499.

125. The decision of approving Amendment 19 to the GPNFP violates NWFP, NFMA and Forest Service regulations implementing same and is contrary to law.

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VI. PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully request that this Court:

- A.** Order the Forest Service to comply with the requirements of NEPA, NFMA, the APA and the other federal laws and regulations noted above, and until defendants do so, issue, as necessary and as specifically requested by plaintiffs, temporary restraining orders, and preliminary and permanent injunctions restraining defendants from approving, authorizing, or implementing any action related to the proposed expansion of the White Pass Ski Area, including actions irretrievably altering the status quo or depriving this court of jurisdiction .
- B.** Order and declare that the ROD and FEIS are inadequate and violate NEPA and the APA.
- C.** Order and declare that the ROD violates NFMA and the APA, and implementing Forest Service regulations.
- D.** Award plaintiff HBPA their reasonable fees, costs, expenses, and disbursements associated with this litigation.
- E.** Grant plaintiffs such additional and further relief as the Court may deem just and proper.

Dated, this 30th day of November, 2007.

Respectfully submitted,

/s/David Bahr
David Bahr, OSB No. 90199
Western Environmental Law Center
HBPA's Trial Counsel
(*Pro Hac Vice* application pending)

/s/ Stephen Tan
Stephen Tan, WSBA No. 22756
Cascadia Law Group, PLLC
Sierra Club's Counsel

/s/Richard A. Poulin
Richard A. Poulin, WSBA No. 27782
SCOPE Law Firm, PLLC
HBPA's Local Counsel